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SEATTLE OFFICE

August 9, 2017

***VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED  
AND VIA EMAIL***

**State of Washington**

Department of Enterprise Services  
Office of Risk Management  
1500 Jefferson Street SE, MS 41466  
Olympia, WA 98504-1466  
[WashingtonStateTortClaimE-Filing@des.wa.gov](mailto:WashingtonStateTortClaimE-Filing@des.wa.gov)

**Monroe School District No. 103**

**Monroe Public Schools**  
Superintendent Fredrika Smith, Ed.D.  
200 E. Fremont Street  
Monroe, WA 98272  
[smithf@monroe.wednet.edu](mailto:smithf@monroe.wednet.edu)

**Snohomish Health District**

Director Gary Goldbaum, M.D.  
3020 Rucker Avenue, Suite 104  
Everett, WA 98201-3900  
[admin@snohd.org](mailto:admin@snohd.org)

**Union High School District No. 402**

Director Karen Rosencrans  
Sky Valley Education Center  
351 Short Columbia Street  
Monroe, WA 98272  
[rosencransk@monroe.wednet.edu](mailto:rosencransk@monroe.wednet.edu)

**RE: SKY VALLEY EDUCATION CENTER**  
***Tort Claim Notices for ANGELA MICHELLE BARD***  
***Preservation of Evidence Demand to Your Offices and All Employees***

Dear Public Employees and Government Officials:

This notice concerns governmental negligence for the provision, maintenance, and inspection of school buildings. *Xia v. Probuilders Specialty Ins. Co. RRG*, 188 Wn.2d 171 (2017). This negligence led to toxic contamination at the old school buildings currently housing the Sky Valley Education Center program in Monroe. The negligence caused environmental poisoning of potentially hundreds of children and adults in those buildings.

As citizens and public servants, we have an obligation to provide reasonably safe learning environments for our children and all people who use our public schools. The public entrusts government to maintain safe public buildings, to enforce health and safety regulations, and to abide by its special relationship to all people in our schools—especially children—to prevent environmental poisoning and to protect them from harm. We do not believe that any of us would genuinely dispute that obligation. It is based on our State Constitution, our statutes and regulations, our common law, our common sense, and our shared moral values.



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As you may know, the old school buildings in this case became contaminated with toxins, including radon, asbestos, lead in the gym drinking fountain, mold, and Polychlorinated Biphenyls (PCBs), to name a few toxins listed in the April 2016 environmental report.<sup>1</sup> None of these toxins is safe. No level of lead in the water, or radon in the air, is safe. When children drink leaded water, it enters their bodies and causes irreparable neurological damage.<sup>2</sup> When children inhale radon gas, microscopic radioactive elements lodge in the lining of the lungs, where they give off radiation. This radiation can damage lung cells and eventually lead to lung cancer. Radon gas is the second leading cause of lung cancer in the United States.<sup>3</sup>

PCBs are artificial organic compounds that were manufactured by Monsanto between the 1930s and the 1970s.<sup>4</sup> PCBs are toxic to the human body and the environment, which is why the United States banned them forty years ago.<sup>5</sup> PCBs can affect every system of the body and—like radon and asbestos—are known carcinogens, according to the International Agency for Research on Cancer<sup>6</sup> and the U.S. Environmental Protection Agency.<sup>7</sup> As you may know, PCBs were a common component in electrical equipment such as light ballasts and construction materials such as caulking. These building components are common in buildings built before the 1970s. In this case, the school buildings were built in the 1950s and 1960s. Although by the 2000s, the buildings were recognized as being deteriorated, the governmental agencies chose not to remediate the buildings and abate the health hazards, or to build newer, safer buildings. Instead, government chose to place children and adults in the old buildings—apparently to save money on rent at another location.

As reported by the U.S. Environmental Protection Agency, PCB-containing light ballasts and caulking emit PCB toxins into the air, which is then inhaled by school children in classrooms:

- PCBs are continuously released into the air from intact, functioning light ballasts
  - When lights are off, emissions are low
  - When lights are on, the ballast heats up, and emissions increase several-fold

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<sup>1</sup> If you do not have a copy of this report, contact me and I can email you a PDF copy.

<sup>2</sup> <https://www.epa.gov/ground-water-and-drinking-water/basic-information-about-lead-drinking-water>

<sup>3</sup> <https://www.cancer.org/cancer/cancer-causes/radiation-exposure/radon.html>. See also <https://www.epa.gov/radon/health-risk-radon>.

<sup>4</sup> <http://www.cbsnews.com/news/washington-state-sues-monsanto-over-pcb-pollution/>.

<sup>5</sup> <https://archive.epa.gov/epa/aboutepa/epa-bans-pcb-manufacture-phases-out-uses.html>.

<sup>6</sup> [https://www.carexcanada.ca/en/announcements/PCBs\\_IARC\\_upgrade/](https://www.carexcanada.ca/en/announcements/PCBs_IARC_upgrade/).

<sup>7</sup> <https://www.epa.gov/pcbs/learn-about-polychlorinated-biphenyls-pcbs>.



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- PCB ballasts can fail, releasing PCB vapors into the air and liquid PCBs onto surfaces  
Air levels of PCBs can become quite large  
Surfaces can be contaminated...<sup>8</sup>

As a result, "Occupants in schools with interior PCB sources will be exposed to PCBs in the indoor air, dust, and on surfaces... Exposures will occur through inhalation, ingestion, and dermal contact."<sup>9</sup> PCBs accumulate in the body and cause a wide range of adverse health effects, including cancer.<sup>10</sup>

The State of Washington, Snohomish Health District, Monroe Public Schools, and the apparent owner of the school buildings, Union High School, are at-fault both individually and collectively for neglecting their obligations to provide a reasonably safe learning environment for students and all those who use these public buildings. Certain private entities may share fault as well. For example, the State of Washington has sued Monsanto for PCB contamination within the State of Washington. Fault must be apportioned and compensation must be made to this individual and all victims of environmental poisoning, commensurate with their degrees of harm. At-fault parties must be held accountable. The past years and decades of governmental inaction show that legal accountability is the only reliable way to motivate government to prevent future harm to other school children, family members, and others. Action should be taken to prevent further environmental poisoning and to protect individuals across the State. Monroe Public Schools is not the only district with contaminated buildings. An ounce of prevention is worth several pounds of cure, especially when there is no cure for the diseases and disorders caused by these environmental contaminants.

### **TORT CLAIM NOTICES**

Attached to this letter is a Standard Tort Claim Form under RCW 4.92.100 for the State of Washington. Also attached is a Local Government Tort Claim Form under RCW 4.96.020. The local government form is directed at three entities: the Snohomish Health District; Monroe School District No. 103; and Union High School District No. 402.<sup>11</sup> These three local governmental entities do not appear to have assigned readily ascertainable agents, instructions, or tort claim forms as required by RCW 4.96.020(2), - (3)(c). The statute provides that the failure of a local governmental entity to comply with these requirements precludes the entity from raising any defense under this chapter. RCW

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<sup>8</sup> [https://cfpub.epa.gov/si/si\\_public\\_file\\_download.cfm?p\\_download\\_id=523572](https://cfpub.epa.gov/si/si_public_file_download.cfm?p_download_id=523572) at 11.

<sup>9</sup> *Id.* at 16.

<sup>10</sup> <https://www.atsdr.cdc.gov/csem/csem.asp?csem=30&po=10>.

<sup>11</sup> Snohomish County Tax Assessor records show Union High School District No. 402 as the apparent owner of the school buildings and premises at or near 351 Short Columbia Street or W. Hill Street and Kelsey Street, Monroe, the location for Sky Valley Education Center a/k/a the old Monroe Middle School.



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4.96.020(2), -(3)(d). Regardless, presenting the Standard Tort Claim Form satisfies a plaintiff's obligations under this chapter. RCW 4.96.020(3)(e). The statute is liberally construed so that substantial compliance by a plaintiff will be deemed satisfactory. RCW 4.96.020(5); RCW 4.92.100(3). By presenting both forms, the claimant has exceeded the requirements of RCW 4.92 and 4.96 for all four governmental entities.

If you believe that information that is specifically required by statute is missing, please contact our office immediately. The statute does not authorize any requirement of a medical release, Social Security number, or other information not specified under the statute. RCW 4.92.100(2) ("The standard tort claim form must not list the claimant's social security number and must not require information not specified under this section."); RCW 4.92.100(1)(a) (enumerating categories of information that may be requested).

The people affected by the governmental negligence include many children. Our office will request from your attorneys and the attorneys for the private entities an agreement to a stipulated protective order that recognizes the privacy interests of all victims and controls the use of their medical and educational records and information, consistent with state and federal privacy laws and the rules of our courts.

#### **NOTICE AND DEMAND TO PRESERVE ALL EVIDENCE**

This letter is also a notice and demand that you take immediate action to preserve all evidence potentially relevant in this case, whether in hardcopy or electronic form or otherwise, that may be in your possession and the possession of your employees and independent contractors, wherever they may be located. This request includes but is not limited to, paper documents, notes, emails and other electronic communications, electronically-stored documents, records of any kind, photographs, images, graphics, recordings, spreadsheets, databases; calendars, telephone logs, deleted files, cached files, user information, and other data. Immediately notify everyone who may be reasonably known to possess such evidence to place a litigation hold and preserve the evidence or potential evidence. Take steps to ensure the litigation hold is implemented and enforced.

Legal sanctions may be imposed on anyone who violates this obligation to preserve evidence. The laws and rules prohibiting destruction of evidence apply to electronically-stored information the same manner that they apply to other evidence. Because of its format, electronic information is easily deleted, modified, or corrupted. ***To be clear, instruct your offices, agencies, facilities, employees, and independent contractors to take every reasonable step to preserve all potentially relevant evidence until the final resolution of this matter.*** This includes, but is not limited to, an obligation to:

- discontinue all data destruction;



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- preserve and not dispose of relevant hardware unless an exact replica of the file is made;
- preserve all passwords, decryption procedures (and accompanying software), network access codes, ID names, manuals, tutorials, written instructions, decompression or reconstruction software; and
- maintain all other pertinent information and tools needed to access, review and reconstruct all requested or potentially relevant data.

#### COMPUTATION OF TIME

Consistent with RCW 4.92.100(1) and RCW 4.96.020(2), the calendar will begin running the 60-day time period on the date your offices received this package via certified mail, return receipt requested. The email copies are presented as a courtesy only to save your offices time in scanning the documents; the email copies and will *not* begin running the 60-day time period.<sup>12</sup> If you dispute this issue or have other concerns, please contact our office so we may begin coordinating on this case.

What happened here involves serious public health hazards that have been ignored for too long. Poisoning by toxic exposure in a school building is entirely preventable. We must remedy the damage and prevent this from happening again. Action must also be taken to protect school children in public school buildings across the State.

Sincerely,

Sean J. Gamble

Enclosures as stated:

RCW 4.92 TORT CLAIM FORM to the State of Washington  
RCW 4.96 TORT CLAIM FORM to the following entities:

- Snohomish Health District
- Monroe School District No. 103
- Union High School District No. 402

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<sup>12</sup> RCW 4.92.100(1) recognizes service of the tort claim form to the State via email. RCW 4.96.020(2), however, does not recognize service of a local government tort claim form via email.